

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

In re: National Lifeline Association  
and Assist Wireless, LLC,

Petitioners.

No. 20-1460

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**OPPOSITION OF FEDERAL COMMUNICATIONS COMMISSION TO  
PETITION FOR WRIT OF MANDAMUS**

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The Federal Communications Commission (“FCC” or “Commission”) opposes the Petition for Writ of Mandamus filed by the National Lifeline Association (“National Lifeline”) and Assist Wireless LLC. Petitioners have failed to show the “extraordinary circumstances” that would entitle them to that “drastic” remedy. *Am. Hosp. Ass’n v. Burwell*, 812 F.3d 183, 189 (D.C. Cir. 2016).

The Commission has repeatedly responded to concerns that the formula it established in 2016 for calculating the minimum standards for Lifeline-funded mobile broadband services could threaten the affordability of those services. The Commission has twice granted partial waivers of the mobile broadband service standard to mitigate increases that the 2016 formula would otherwise have produced, and is currently collecting data in preparation for a State of the Lifeline Marketplace Report (“Marketplace Report”), due in June 2021, that will inform the agency’s further evaluation of the standard. These ongoing efforts to strike the

proper balance between different statutory priorities—ensuring Lifeline customers do not receive “second-class” service while also ensuring their service is affordable—belie Petitioners’ claims of inaction, and the agency’s timetable is due “considerable deference.” *Cutler v. Hayes*, 818 F.2d 879, 896 (D.C. Cir. 1987). At a minimum, there is simply no reason, as Petitioners request, to “require the FCC to rule on the reconsideration petitions before the Marketplace Report is issued” (Pet. 33) and the agency has had a chance to consider its findings.

Petitioners contend that mandamus is necessary now to protect Lifeline customers because, they claim, application of the current 4.5 gigabyte (GB)-per-month standard will require Lifeline providers to charge a copayment that will be unaffordable for many customers. But as the Commission explained in response to Petitioners’ recent motion to stay the service standard—which this Court properly rejected—Lifeline providers have never substantiated their claims that the standard will require them to charge a copay, and at least one provider has committed to offer such service without a copay through November 2021. Nor do any of the remaining factors for evaluating undue agency delay weigh in favor of mandamus.

The petition should be denied.

## **BACKGROUND**

### **A. The Lifeline Program**

The Lifeline program provides a \$9.25 monthly subsidy to providers that offer discounted communications services to low-income customers. The Commission administers the Lifeline program in line with “evolving” universal service principles. 47 U.S.C. § 254(c)(1). These include making such services “available at just, reasonable, and affordable rates,” 47 U.S.C. § 254(b)(1), and ensuring low-income consumers have “access to telecommunications and information services,” including “advanced telecommunications and information services,” that are “reasonably comparable” to “those services provided in urban areas.” *See* 47 U.S.C. § 254(b)(3). In considering what services should be supported by the universal service programs, the Commission must also consider the extent to which such services “have . . . been subscribed to by a substantial majority of residential customers.” 47 U.S.C. § 254(c)(1)(B).

### **B. The Minimum Service Standards**

In 2016, in response to increasing concerns that a “digital divide” was leaving low-income Americans behind, the Commission adopted “minimum service standards” for Lifeline service offerings. *Lifeline and Link Up Reform and Modernization*, 31 FCC Rcd. 3962, 3988-4002 ¶¶ 69-113 (2016) (“2016 Order”). These standards required Lifeline providers to offer a minimum broadband data

allowance for mobile communications devices on a stairstep schedule of gradually increasing amounts: 500 megabytes (MB) per month beginning on December 1, 2016, 1 GB per month on December 1, 2017, and 2 GB per month on December 1, 2018. *2016 Order* ¶ 93. Thereafter, the Commission provided that the minimum mobile broadband data standard would be set at an amount equal to 70 percent of the national average mobile data usage per household. *2016 Order* ¶ 94.

The Commission explained that its minimum service standards were “rooted in the statutory directives” to ensure that “quality services are available at ‘just, reasonable, and affordable rates,’” and that “advanced telecommunications services . . . ‘subscribed to by a substantial majority of residential customers’ are available throughout the nation.” *2016 Order* ¶ 70 (citing 47 U.S.C. § 254(b)(1), § 254(c)(1)(B)). The Commission found that the standards “strike a balance between the demands of affordability and reasonable comparability by providing consumers with services that allow them to experience many of the Internet’s offerings, but not mandating the purchase of prohibitively expensive offerings.” *2016 Order* ¶ 71; *see also id.* at ¶ 70 (the standards, as updated, “will give Lifeline subscribers confidence that their supported service will remain robust as technology improves”). Moreover, the Commission concluded, “allowing the Lifeline benefit to be used on services that do not meet [the] standards would lead to the type of ‘second class’ service that the minimum service standards are meant

to eliminate,” and would lead providers “to continue to offer low-quality services.” *2016 Order* ¶ 104.

Recognizing the “inherent uncertainty in the future Lifeline marketplace,” the Commission also directed the Wireline Competition Bureau (the “Bureau”) to produce a State of the Lifeline Marketplace Report (the “Marketplace Report”) by June 30, 2021. *2016 Order* ¶ 66. The Commission anticipated that the report would allow it to “take appropriate action if necessary to make changes to the program within six months of receiving [it],” such as, “for example [by] adjusting support levels or minimum service standards, so that the Lifeline program continues to achieve its objectives.” *Ibid.*

### **C. The Petition for Reconsideration**

Assist (but not National Lifeline) filed a petition for reconsideration, joined by several other Lifeline providers. Joint Lifeline ETC Petitioners’ Petition for Partial Reconsideration and Clarification, WC Docket 11-42 (June 23, 2016) (“*Joint ETC Petition*”) (Pet. Att. G). The petition asserted that the Commission’s minimum service standard for broadband “relie[d] on an unworkable multiperson household formula” that was “untethered to the Lifeline program’s ‘central touchstone’ of affordability.” *Joint ETC Petition* at 3. The petition proposed an alternative formula based on average individual use (rather than average household

use), which would be adjusted further based on retail prices of comparable offerings. *Id.* at 7-8. Assist's petition for reconsideration remains pending.<sup>1</sup>

#### **D. The 2019 Waiver Order**

The Commission first had occasion in 2019 to implement the formula adopted in the *2016 Order* to calculate the minimum service standard for Lifeline mobile broadband data. Because average broadband data usage for households nationwide had increased dramatically, implementation of the minimum service standard formula would have resulted in an increase in the minimum data allowance from 2 GB to 8.75 GB per month. *See Wireline Competition Bureau Announces Updated Lifeline Minimum Services Standards and Indexed Budget Amount*, Public Notice, 34 FCC Rcd. 6363, 6364 (2019) (Pet. Att. J).

Citing the size of the increase produced by the *2016 Order*'s formula, a trade association of wireless providers and others petitioned the Commission to retain the existing 2 GB standard and waive implementation of the 2016 formula until the Marketplace Report was completed. *See Joint Petition to Pause Implementation of December 2019 Lifeline Minimum Service Standards Pending Forthcoming Marketplace Study*, WC Docket 11-42 et al. (June 27, 2019). The petition stated

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<sup>1</sup> Two other petitions for reconsideration were filed by TracFone Wireless, a Lifeline provider (Pet. Att. I) and CTIA, a wireless trade association (Pet. Att. H), both of which also remain pending.

that “the marketplace for mobile wireless services and Lifeline services has continued to evolve in ways the Commission could not predict in 2016,” and that the Marketplace Report would allow the Commission to “make an informed decision regarding all of the relevant issues – including affordability, access and consumer choice.” *Id.* at 2. National Lifeline submitted *ex parte* notices and comments in support of the petition, and stated that the Marketplace Report would “allow the Commission to effectively balance the goals of reasonable comparability and affordability.” *See* Letter from John J. Heitmann & Joshua Guyan, Counsel to the National Lifeline Association and Q Link Wireless LLC, WC Docket 11-42 et al., at 2 & n.2 (filed Nov. 1, 2019).

The Commission granted the petition in part, and waived the 2016 rule to permit a smaller increase in the minimum data allowance, from 2 GB to 3 GB per month. *Lifeline and Link Up Reform and Modernization et. al.*, Order, 34 FCC Rcd 11020, 11021 ¶ 13 (2019) (“*2019 Waiver Order*”). The Commission found that the increase that would have resulted from unqualified application of the formula “risks upsetting the careful balance the Commission struck when establishing the Lifeline minimum service standards in the *2016 Order*,” *id.* ¶ 8, and would have “yield[ed] a far larger year-over-year change” in the mobile broadband standard “than we believe the Commission anticipated,” *id.* ¶ 9. Although the record contained “no clear evidence on the extent of additional costs”

to Lifeline providers that would result from such an increase, the agency found it reasonable to anticipate that “a more than four-fold increase” in the standard “would require substantially greater network resources,” with associated costs that “would be passed along to resellers and/or end-users.” *Id.* ¶ 10. The Commission concluded that, “[a]bsent a more substantial transition period,” such a large increase “could unduly disrupt service to existing Lifeline subscribers.” *Id.*

The Commission denied the waiver petition insofar as it sought to freeze the standard at 2 GB per month, however. The agency concluded that such a freeze would be inconsistent with its statutory duty to ensure that the Lifeline program supports “an evolving level of service,” particularly taking into account that the wireless market has “continued to evolve in the direction of larger data allowances.” *2019 Waiver Order* ¶ 12 (citing 47 U.S.C. § 254(c)(1)). Noting that the average smartphone subscriber used 5.1 GB of data per month in 2017, *id.* ¶ 12, the Commission found that “limiting Lifeline subscribers to a usage allowance of less than half of what other smartphone subscribers actually use today” would result in providing them an “unacceptable” “second-class service.” *Id.* ¶ 14. In the end, the Commission determined that an increase in the minimum standard to 3 GB per month in 2019 was “feasible for Lifeline providers and would ‘best meet the Commission’s objectives’ for the Lifeline program.” *Id.* ¶ 13.

No party sought administrative or judicial review of the *2019 Waiver Order*.



### **E. The 2020 Waiver Order**

In July 2020 the Bureau announced that, because of fast-climbing broadband data usage, implementation of the *2016 Order*'s formula would result in an increase in the minimum broadband data standard from 3 GB per month to 11.75 GB per month. *Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount*, Public Notice, DA 20-820 (July 31, 2020) (Pet. Att. L). National Lifeline filed a petition to waive the scheduled increase to 11.75 GB per month “pending final resolution of the State of the Lifeline Marketplace Report in 2021 and pending petitions for reconsideration of the mobile broadband MSS, which likely will require additional notice and opportunity for comment.” National Lifeline Association Petition for Waiver of Lifeline Mobile Broadband Minimum Service Standard and Voice-Support Phase-Down, WC Docket 11-42 et. al., at 7 (Aug. 27, 2020) (Pet. Att. N).

On November 9, 2020, National Lifeline and Assist also sought a stay of the increase. Emergency Petition for Stay of the Implementation of Section 54.408(b)(2)(ii)(D) of the Federal Communication Commission's Rules Governing the Lifeline Mobile Broadband Minimum Service Standard, WC Docket 11-42 et. al. (Nov. 9, 2020) (Pet. Att. D).

On November 16, 2020, the Bureau, acting on delegated authority from the Commission, granted the requested waiver in part “to the extent it would establish

a minimum service standard greater than 4.5 GB/month, beginning on December 1, 2020.” *Lifeline and Link Up Reform and Modernization et. al.*, Order, DA-20-1358, ¶ 2 (WCB Nov. 16, 2020) (*2020 Waiver Order*) (Pet. Att. C). The Bureau on the same day denied the stay request, citing the waiver it had granted. *Lifeline and Link Up Reform and Modernization et. al.*, Order, DA-20-1359 (WCB Nov. 16, 2020) (Pet. Att. E).

Following the “roadmap” the Commission had laid down in the *2019 Waiver Order*, the Bureau found that a one-year “moderate 50% increase” in the minimum broadband data service standard appropriately “balances” the Lifeline program’s “goals of accessibility and affordability.” *2020 Waiver Order* ¶ 2. The Bureau found that a freeze of the minimum service standard would be “unreasonable and counter to our statutory obligations and the Commission’s goals” to ensure that Lifeline “supports an evolving level of service” and that Lifeline subscribers are not “left behind” with “second-class service,” particularly during the current pandemic. *Id.* at ¶¶ 13-15. The Bureau explained that the record contained no “substantial evidence” that a limited increase to 4.5 GB per month would make Lifeline service “unaffordable” or “prevent free-to-the-end-user service.” *2020 Waiver Order* ¶ 16. The Bureau also noted that National Lifeline had contended in 2019 that an increase in the minimum standard from 2 GB to 3 GB per month would require providers to impose a co-pay on Lifeline subscribers, but those

arguments had “proven to be false.” *2020 Waiver Order* ¶ 18. Finally, the Bureau observed, one provider (T-Mobile) had publicly committed to offer a zero-copay 4.5 GB Lifeline plan. *Id.* at ¶ 16. In the absence of “clear data” that increasing the standard from 3 GB per month to 4.5 GB per month would prevent the provision of affordable service, the Bureau “decline[d] to fill that gap with speculation.” *Id.* at ¶ 20.

#### **F. The Petition for Mandamus**

On November 19, 2020, National Lifeline and Assist filed a petition for mandamus to “compel[] the FCC to grant or deny the petitions for reconsideration filed by Petitioners and others in June 2016 seeking reconsideration of the *2016 Order*.” Pet. 33. Petitioners asked the court “to require the FCC to rule on the reconsideration petitions before the Marketplace Report is issued.” Pet. 33.

Petitioners concurrently filed an emergency motion for stay of the increase in the mobile broadband minimum service standard from 3 GB to 4.5 GB, and stated that if the increase goes into effect, “Lifeline providers would be forced to impose co-pays on low-income consumers” because “no other carrier [than T-Mobile] can profitably provide more than 3 GB per month for a price covered by Lifeline’s \$9.25 reimbursement.” Emergency Motion for Stay Pending Petition for Writ of Mandamus, Docket No. 1872059, at 9 (Nov. 19, 2020) (“Stay Motion”) (Pet. Att. D).

This Court denied the Stay Motion on November 30, 2020, because “[p]etitioners ha[d] not satisfied the stringent requirements for a stay.” Docket No. 1873511. In the same order, the Court directed the Commission to respond to the petition for mandamus. *Ibid.*

### **G. The Data Collection Order**

On December 23, 2020, the Bureau released an order “direct[ing] a group of mobile service providers to respond to a questionnaire about customer usage and costs” to “aid the development of the State of the Lifeline Marketplace Report” and “inform the policy choices before the Commission regarding the mobile broadband minimum service standards[.]” *State of the Lifeline Marketplace Report*, Order, DA-20-1529, ¶ 2 (WCB Dec. 23, 2020) (“*Data Collection Order*”) (Att. A). The Bureau explained that although a number of parties have “argued that the increased mobile broadband usage minimum service standard resulting from the existing rules will render Lifeline service unaffordable due to increases in providers’ costs, requesting parties have consistently failed to include any cost data that would support their claims.” *Id.* ¶ 7. The Bureau sought “network cost data, including wholesale costs, subscribership usage data, and overhead cost data from the nine largest Lifeline mobile service providers, measured by subscribership.” *Id.* ¶ 13. The Bureau explained that the data would inform the State of the Lifeline Marketplace Report and “allow the Bureau to assess and make recommendations to

the Commission about, among other policy changes, the mobile broadband usage minimum service standard as advocated for by several parties, the phase-out of Lifeline voice support and transition to chiefly supporting broadband services, and Lifeline support amounts.” *Id.* ¶ 12.

### ARGUMENT

Mandamus “is an extraordinary remedy, reserved only for the most transparent violations of a clear duty to act.” *In re Pub. Emps. for Envtl. Responsibility*, 957 F.3d 267, 273 (D.C. Cir. 2020). Petitioners have not identified such circumstances here.

Over the four years that Petitioners characterize as “delay,” the Commission has repeatedly acted to address concerns that the service standard formula adopted in the *2016 Order* requires providers to offer an unaffordable quantity of broadband to Lifeline customers. Currently, the Commission is gathering data about the Lifeline market and is due to produce a report in June 2021 that will inform future efforts to balance the need for reasonable comparability and affordability. An agency has “broad discretion to set its agenda,” and its “timetable for completing its proceedings” is entitled to “considerable deference.” *Cutler v. Hayes*, 818 F.2d 879, 896 (D.C. Cir. 1987). In light of the agency’s actions to adjust the broadband minimum service standard, as well as the upcoming issuance of the Marketplace Report, the Commission’s failure (so far) to dispose of

the pending petitions for reconsideration cannot be considered unreasonable. *See Telecomms. Research & Action Ctr. v. FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984).

The petition should therefore be denied.

**A. The Commission Has Repeatedly Addressed The Lifeline Broadband Minimum Service Standard Since Adoption Of The 2016 Order.**

Petitioners contend that the Commission “has not taken *any* action” on the petitions asking the Commission to “reconsider its minimum service standard for broadband.” Pet. 20. But the Commission has repeatedly addressed the core challenge to the service standards raised in the petitions for reconsideration and the petition for mandamus: the claim that providers cannot meet the standards without charging a copay that Lifeline customers cannot afford. *See* Pet. 25-26, *see also id.* 8-9 (citing *Joint ETC Petition* at 3).

Thus, in 2019, when “the primary methodology for updating the minimum standard for mobile broadband usage under the Lifeline program’s rules yield[ed] a far larger year-over-year change” than anticipated, the Commission partially waived the standard and reduced the scheduled increase from 8.75 GB to 3 GB. *2019 Waiver Order* ¶ 9. As the Commission explained, it did so to “balance[] the core objectives of bringing the mobile broadband usage available to our nation’s most vulnerable consumers more in line with what other Americans expect and receive from their service, while maintaining a service that is affordable for low-income consumers.” *Id.* ¶ 13. In 2020, the Bureau took the same approach,

reducing the scheduled increase in the broadband data minimum service standard from 11.75 GB to 4.5 GB. *2020 Waiver Order* ¶ 15. The Commission has thus taken repeated steps to address provider concerns regarding the broadband minimum service standard during the four years that the petitions for reconsideration of the *2016 Order* have been pending.

Moreover, the Commission is continuing to work on the issue. For example, the information it collects pursuant to the recent *Data Collection Order* will “allow the Commission to evaluate whether the current minimum service standard rules and program reimbursement amounts support an evolving level of service for low-income Americans at an affordable rate.” *Data Collection Order* ¶ 16.

And this past year, the Commission considered a proposal circulated by Chairman Pai that would have “revise[d] the Commission’s existing [service standard] methodology to ensure predictable, reasonable yearly updates to the standard so that Lifeline subscribers can receive robust yet affordable mobile broadband service.” *FCC Chairman Pai Circulates Order to Ensure Predictable Increases in Minimum Standard for Lifeline Mobile Broadband Service* at 1 (July 30, 2020) (Pet. Att. M). Although that proposal was not adopted, it hardly demonstrates “agency lassitude” (Pet. 31); on the contrary, it further illustrates that

the agency has continued to explore ways to balance the competing statutory priorities in this area.<sup>2</sup>

The task of ensuring Lifeline service is both robust and affordable is also “complex[.]” *Mashpee Wampanoag Tribal Council, Inc. v. Norton*, 336 F.3d 1094, 1102 (D.C. Cir. 2003). As this Court has recently recognized, Lifeline is a “complex program laden with carefully considered implicit and explicit policy judgments on the part of the Commission.” *Nat’l Lifeline Ass’n v. FCC*, No. 20-1006, 2020 WL 7511124, at \*9 (D.C. Cir. Dec. 22, 2020). To date, providers have not offered the cost data that would allow the Commission to credit their claims regarding affordability. *See 2019 Waiver Order* ¶ 10 & n.24; *Data Collection Order* ¶¶ 18-20. The Bureau is now collecting that information, and is due to produce the Marketplace Report next June. Armed with that information, the Commission will be in a better position to resolve the issues surrounding the *2016 Order*’s minimum service standard raised by the pending petitions for

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<sup>2</sup> Petitioners assert that Chairman Pai “acted inappropriately” by “refusing to compromise with his fellow Commissioners to reach the consensus necessary to garner enough votes to approve the item.” Pet. 31. They offer no evidence for this speculative assertion, and no authority for the premise that the failure of a multi-member body to agree on a proposed course of action constitutes “impropriety,” *ibid.*, or that the Chairman’s decision to hold to his policy views was in any respect inappropriate. To the contrary, it is entirely appropriate for the Chairman, or for any Commissioner, to hold to his or her policy views.



reconsideration. It makes little sense to accede to Petitioners' request to compel the Commission to resolve the petitions for reconsideration before that relevant information becomes available. *See Her Majesty the Queen in Right of Ontario v. EPA*, 912 F.2d 1525, 1534-1535 (D.C. Cir. 1990) (delay in addressing "complex[]" issue was "understandable" when the agency was due to produce a report expected to "provide it with a sufficient basis to make a reasoned decision" within the year).

**B. The Commission's Delay In Resolving The Petitions For Reconsideration Was Not Unreasonable.**

Given the Commission's continuing efforts to address the minimum service standard, as well as the upcoming Marketplace Report, the Commission's failure so far to adopt an order resolving the petitions for reconsideration was not unreasonable.

This Court evaluates claims of unreasonable agency delay under the multi-factor test first set forth in *Telecomms. Research & Action Ctr. v. FCC*, 750 F.2d 70 (D.C. Cir. 1985) ("*TRAC*"). Under *TRAC*, this Court looks to (1) whether the agency's time frame satisfies a "rule of reason," (2) whether "Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed," (3) whether the agency's delay is in "the sphere of economic regulation" or instead puts "human health and welfare at stake," (4) "the effect of expediting delayed action on agency activities of a higher or competing priority," (5) "the nature and extent of the interests prejudiced by delay," and (6) whether the

delay involves “impropriety.” 750 F.2d at 80. “No one factor is determinative, and ‘[e]ach case must be analyzed according to its own unique circumstances.’” *In re Public Employees*, 957 F.3d at 273 (citing *Air Line Pilots Ass’n v. Civil Aeronautics Bd.*, 750 F.2d 81, 86 (D.C. Cir. 1984)). And even when the requirements for mandamus are otherwise met, “a court may grant relief only when it finds compelling equitable grounds” to do so. *Burwell*, 812 F.3d at 189 (citing *In re Medicare Reimbursement Litig.*, 414 F.3d 7, 10 (D.C. Cir. 2005)).

1. As Petitioners acknowledge, *see* Pet. 32, Congress has not prescribed a timetable for Commission action on petitions for reconsideration. *See* 47 U.S.C. § 405(a); 47 C.F.R. § 1.429 (authorizing petitions for reconsideration of FCC rulemaking orders, but setting no deadline for decision). And the circumstances of this case provide no basis for concluding that the Commission’s failure so far to decide the reconsideration petitions violates a rule of reason.

As explained above, the Commission has actively worked to address the mobile broadband minimum service standard over the four years that the petitions for reconsideration have been pending. Because of those efforts, the formula adopted in the *2016 Order*—about which the petitions for reconsideration complain and which is the primary target of the petition for mandamus—has never been implemented. Instead, by granting partial waivers of the formula, the Commission has continued its staircase approach of gradually increasing the

standard to follow market trends while adjusting for affordability. And, in June 2021, the Commission will have the benefit of a report on the Lifeline marketplace, bolstered by the recent data collection, that should help to inform any future decision to address the minimum service standard.

This time frame satisfies the “rule of reason.” *TRAC*, 750 F.2d at 70. Despite petitioners’ contention that a four-year delay is “plainly unreasonable, Pet. 19, “[t]here is no per se rule as to how long is too long.” *In re Pub. Employees*, 957 F.3d at 274 (alteration in original); see *Grand Canyon Air Tour Coal. v. FAA*, 154 F.3d 455, 477 (D.C. Cir. 1998) (ten-year delay not “unreasonable”); *TRAC*, 750 F.2d at 80-81 (delays of two and five years did not warrant mandamus); *In re Monroe Commc’ns Corp.*, 840 F.2d 942, 945-47 (D.C. Cir. 1988) (delay of three years fell “so short of egregious” that it did not warrant mandamus).

2. Mandamus also is not necessary to protect “the health and welfare of low-income consumers.” See Pet. 23. The need for sufficient broadband to “help households meet their basic needs for education, health care, disabilities access, and public safety” is precisely the reason the Commission set a minimum data allowance for Lifeline customers that is “updated on a regular basis” to keep pace with usage by non-Lifeline customers. *2016 Order* ¶¶ 75-77. The “increased reliance on broadband nationwide” during the pandemic has only heightened the

need to ensure Lifeline customers are not left “behind during a pandemic that has disproportionately affected them.” *2020 Waiver Order* ¶ 12.

Petitioners’ claim to the contrary is based on the flawed premise that the service standard will “force Lifeline to migrate to a model in which a significant majority of Lifeline subscribers will be faced with a broadband plan co-pay they cannot afford.” Pet. 25. But as the Commission explained in response to Petitioners’ unsuccessful Stay Motion, *see* Docket No. 1873065 at 13-17, there is no “evidence in the record” to support these claims. *In re United Mine Workers of Am. Int’l Union*, 190 F.3d 545, 552 (D.C. Cir. 1999). Rather, one large Lifeline provider has committed to “offer a Lifeline service plan at 4.5 GB/month with no end user recurring charge” until the end of November 2021. *2020 Waiver Order* ¶ 16. And although Petitioners assert that other providers cannot do the same, providers have offered no cost data to substantiate these claims, and prior claims of infeasibility have “proven to be false.” *2020 Waiver Order* ¶ 18.<sup>3</sup> The

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<sup>3</sup> This case is therefore unlike *Public Citizen Health Research Grp. v. Auchter*, 702 F.2d 1150 (D.C. Cir. 1983), on which Petitioners rely. *See* Pet. 27. *Auchter* involved the failure to regulate a toxic chemical despite “[a]mple evidence in the record” that it presented a “potentially grave danger” to human health. *Auchter*, 702 F.2d at 1157. This Court has declined to follow *Auchter* when there existed “substantially less evidence that delay would put human health at risk.” *United Mine Workers*, 190 F.3d at 552 (denying mandamus despite violation of statutory deadline for regulating diesel emissions in coal mines).

Commission correctly rejected Petitioners' unsupported assertions. *See Nat'l Lifeline Ass'n*, 2020 WL 7511124, at \*11 (Commission "justifiably" rejected providers' claims regarding Lifeline "availability and affordability" where no provider offered "any quantitative data to back up its assertions").

3. The court must also consider the "potential impact of any attempt to accelerate the progress of the matter in question on other agency activities of equal or higher importance." *In re Monroe Commc'ns*, 840 F.2d at 945 (citing *TRAC*, 750 F.2d at 80). The Lifeline program is only one of the Commission's myriad responsibilities, many of which relate to the cost and availability of broadband. The Commission has been engaged in a number of initiatives to, among other things, promote broadband deployment in rural areas, *see Rural Digital Opportunity Fund, Phase I Auction*, Public Notice, 35 FCC Rcd 6077 (2020); open up unused or underutilized spectrum for wireless use, *see Unlicensed Use of the 6 GHz Band, Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz*, Report and Order and Further Notice of Proposed Rulemaking, 35 FCC Rcd 3852 (2020); *Expanding Flexible Use of the 3.7 to 4.2 GHz Band*, Report and Order and Order of Proposed Modification, 35 FCC Rcd 2343 (2020); and provide funding to health care providers to support the communications services and devices needed for connected care in response to the COVID-19 pandemic, *see Promoting Telehealth for Low-Income Consumers*, Report and Order, 35 FCC Rcd

3366 (2020). Especially in light of the Bureau’s current efforts to prepare the Lifeline Marketplace Report, “judicial imposition of an overly hasty timetable . . . would ill serve the public interest.” *United Steelworkers of Am. v. Rubber Mfrs. Ass’n*, 783 F.2d 1117, 1120 (D.C. Cir. 1986); see *W. Coal Traffic League v. Surface Transp. Bd.*, 216 F.3d 1168, 1175 (D.C. Cir. 2000) (declining to “forc[e]” agency to meet statutory deadline for deciding merger applications before agency completed reevaluation of standards by which it judged such applications because doing so “would defeat altogether the purpose of the agency’s review”).

In this regard, the Court should also take into account that the reconsideration petitions will need to be evaluated by a new chairperson and new commissioners. On November 30, 2020, FCC Chairman Ajit Pai announced he would leave the Commission on January 20, 2021. Chairman Pai Announces His Intent to Depart FCC at 1, <https://www.fcc.gov/document/chairman-pai-announces-intent-depart-fcc-january>, (November 30, 2020). And on December 14, 2020, Nathan Simington joined the Commission, replacing departing Commissioner Michael O’Reilly. During this period of transition, the Court should be particularly “slow to assume command over [the Commission’s] choice of priorities.” *In re Barr Labs., Inc.*, 930 F.2d 72, 74 (D.C. Cir. 1991).

4. Finally, as for the “nature and extent of interests” at stake, *TRAC*, 750 F.2d at 80, petitioners’ argument that the Commission has “prejudice[d] the

interests of Lifeline-eligible consumers,” Pet. 27, rests on the same unfounded assertions as their claims regarding customer welfare, and fails for the same reasons. Petitioners also assert that Lifeline providers will lose revenue and incur new customer service costs, Pet. 28-29, but these interests are “commercial,” and the “need to protect them through the exceptional remedy of mandamus is therefore lessened.” *In re Monroe Commc’ns*, 840 F.2d at 945.<sup>4</sup>

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Only two months ago, Petitioners urged the Commission to “comprehensively reconsider the [service standard] in the context of deciding the pending petitions for reconsideration *following* the 2021 State of the Lifeline Marketplace Report next year.” National Lifeline Association *Ex Parte*, WC Docket 11-42 (Oct. 8, 2020) (Pet. Att. T) (emphasis added). Petitioners’ contention that the Commission should “prioritize action on the reconsideration petitions” ahead of the agency’s other activities, Pet. 30-31, and “[b]efore issuing the Marketplace Report,” *id.* at 33, is inconsistent with their prior views, and again

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<sup>4</sup> Petitioners suggest that the Commission has prevented them from “seek[ing] appellate relief” by failing to act on the reconsideration petitions. *See, e.g.*, Pet. 2, 18, 22. But Petitioners offer no reason they could not have withdrawn their petition for reconsideration and proceeded with an appeal. *See Los Angeles SMSA Ltd. P’ship v. FCC*, 70 F.3d 1358, 1360 (D.C. Cir. 1995) (holding that “the appeal period begins to run anew on withdrawal by the petitioning party of its administrative petition for reconsideration”).

rests on the unsubstantiated premise that the 4.5 GB standard will harm Lifeline customers. Because the agency has been actively engaged in addressing and adjusting the minimum broadband standard for Lifeline services, there has been no unreasonable delay warranting the extraordinary relief of mandamus.

### **CONCLUSION**

The petition for mandamus should be denied.

Respectfully submitted,

Thomas M. Johnson, Jr.  
General Counsel

Ashley S. Boizelle  
Deputy General Counsel

Jacob M. Lewis  
Associate General Counsel

*/s/ Rachel Proctor May*

Rachel Proctor May  
Counsel

Federal Communications  
Commission  
Washington, DC 20554  
(202) 418-1902

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/s/ Rachel Proctor May

Rachel Proctor May  
Counsel

Federal Communications  
Commission  
Washington, D.C. 20554  
(202) 418-1740

**CERTIFICATE OF FILING AND SERVICE**

I, Rachel Proctor May, hereby certify that on December 30, 2020, I filed the foregoing Opposition Of Federal Communications Commission To Petition For Writ Of Mandamus with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the electronic CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

/s/ Rachel Proctor May

Rachel Proctor May  
Counsel

Federal Communications  
Commission  
Washington, D.C. 20554  
(202) 418-1740

# ATTACHMENT A

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

State of the Lifeline Marketplace Report

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WC Docket No. 20-437

**ORDER**

**Adopted: December 23, 2020**

**Released: December 23, 2020**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. The Lifeline Program—one of four universal service programs aimed at fulfilling the Commission’s statutory mandate to ensure that all Americans have access to quality services at just, reasonable, and affordable rates—provides support for qualifying low-income consumers.<sup>1</sup> In the *2016 Lifeline Order*, the Commission amended its rules to “permit Lifeline providers to receive Lifeline support for standalone mobile or fixed broadband service offerings,”<sup>2</sup> “phase[d] in a requirement that to be eligible for Lifeline support, a voice service must include broadband service, thereby phasing-out support for voice service as a standalone option”<sup>3</sup> and, for both fixed and mobile, adopted minimum service standards for Lifeline-supported services that were “forward-looking” and “updated on a regular basis,”<sup>4</sup> and “direct[ed] the [Wireline Competition] Bureau, near the end of the transition, to review the Lifeline market and submit a report to the Commission recommending whether action should be taken to revise the [Commission’s] approach to supported services.”<sup>5</sup> The Commission expected that “the full Commission will take appropriate action if necessary to make changes to the program within six months of receiving the report, for example adjusting support levels or minimum service standards, so that the Lifeline program continues to achieve its objectives.”<sup>6</sup> The deadline for the Wireline Competition Bureau’s (Bureau) State of the Lifeline Marketplace Report is June 30, 2021.

2. Today, we direct a group of mobile service providers to respond to a questionnaire about customer usage and costs.<sup>7</sup> The responses of this group, encompassing a significant portion of the Lifeline marketplace by subscribership, will aid the development of the State of the Lifeline Marketplace Report. We also expect this data to inform the policy choices before the Commission regarding the mobile broadband minimum service standards—standards established in 2016 and annually updated

<sup>1</sup> 47 U.S.C. § 254(b)(1); *Lifeline and Link Up Reform and Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962 (2016) (*2016 Lifeline Order*).

<sup>2</sup> *Id.* at 3979, para. 48.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 3988, para. 69.

<sup>5</sup> *Id.* at 3979, para. 48.

<sup>6</sup> *Id.*

<sup>7</sup> These providers are: Deutsche Telekom AG, América Móvil, Quadrant Holdings Group LLC, TSC Acquisition Corporation, Telrite Corporation, Amerimex Communications Corporation, i-wireless, LLC, Global Connection Inc. of America., and Assist Wireless, LLC. Each provider should respond as a single entity, regardless of the number of separately incorporated operating companies or individual employees.

thereafter,<sup>8</sup> but that various parties have petitioned the Commission to reconsider without thus far including the cost data necessary to show that changes to the minimum service standards are needed to maintain affordability in the Lifeline program.<sup>9</sup>

## II. BACKGROUND

3. The *2016 Lifeline Order* made numerous changes to our Lifeline rules. Most pertinent here, it called for a shift of Lifeline service away from the voice market and toward the market for broadband “to ensure the Lifeline program continues to focus its funding on modern, future-facing services for which affordability is an issue.”<sup>10</sup> With the goal of creating a gradual transition from a primarily voice-only Lifeline program to a Lifeline program embracing broadband services,<sup>11</sup> the Commission adopted minimum service standards for the Lifeline program to enable low-income consumers “to obtain the type of robust service which is essential to participate in today’s society.”<sup>12</sup> The Commission also established mechanisms for regularly updating those standards with the goal of ensuring that Lifeline service would “remain robust as technology improves through a predictable mechanism.”<sup>13</sup> Specifically, the rules set forth the mobile broadband usage minimum service standard at 500 MB per month beginning on December 2, 2016, followed by an increase to 1 GB per month on December 1, 2017, and then to 2 GB per month on December 1, 2018.<sup>14</sup> Thereafter, the mobile broadband usage minimum service standard would be set at an amount equal to 70% of the national average mobile data usage per household.<sup>15</sup>

4. At the same time, the Commission provided for a gradual decrease in the support amount for services meeting only the voice minimum service standards, with the support amount decreasing from \$9.25 to \$7.25 per month on December 1, 2019, from \$7.25 to \$5.25 per month on December 1, 2020, and from \$5.25 to \$0 on December 1, 2021 in most areas.<sup>16</sup> The Commission recognized the “inherent uncertainty” in long-term predictions of the marketplace, however, and thus directed the Wireline Competition Bureau to review the Lifeline market and submit a State of the Lifeline Marketplace Report to the Commission in June 2021 recommending “whether the transition set out in [the 2016] Order should be completed or whether the Commission should act to continue delaying Lifeline’s transition to chiefly supporting broadband services,” particularly considering “the prevalence of subscriptions to various service offerings in the Lifeline program, the affordability of both voice and broadband services, the pace

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<sup>8</sup> See 47 CFR § 54.408(c). We establish this data collection Order due to ongoing concerns regarding the mobile broadband minimum service standards with respect to capacity. We note that the speed component of the mobile broadband minimum service standards is not subject to requests for modification and is therefore not the primary aim of this data collection.

<sup>9</sup> See, e.g., Joint Lifeline ETC Petitioners’ Petition for Partial Reconsideration and Clarification, WC Docket No. 11-42 et al. (filed June 23, 2016) (Petitioners were the Lifeline Connects Coalition, along with Assist Wireless, Easy Wireless, Prepaid Wireless Group LLC, and TruConnect); Petition for Reconsideration of CTIA, WC Docket 11-42 (filed June 23, 2016); Petition for Reconsideration, TracFone Wireless, Inc., WC Docket 11-42 (filed June 23, 2016); Joint Petition to Pause Implementation of December 2019 Lifeline Minimum Service Standards Pending Forthcoming Marketplace Study, WC Docket No. 11-42 et al. (filed June 27, 2019); National Lifeline Association Petition for Waiver of Lifeline Mobile Broadband Minimum Service standard and Voice Support Phase-Down, WC Docket No. 11-42 et. al. (filed Aug. 27, 2020).

<sup>10</sup> *2016 Lifeline Order*, 31 FCC Rcd at 3979, para. 48.

<sup>11</sup> *Id.* at 3985-86, para. 62.

<sup>12</sup> *2016 Lifeline Order*, 31 FCC Rcd at 3988, para. 69.

<sup>13</sup> *Id.* at paras. 69-70.

<sup>14</sup> *Id.*; 47 CFR § 54.408(b)(2)(ii)(A)-(C).

<sup>15</sup> *2016 Lifeline Order*, 31 FCC Rcd at 3995-96, para. 94.

<sup>16</sup> *Id.* at 4003, para 117.

since adoption of [the 2016] Order at which voice and data usage has changed, and the associated net benefits of continuing to support voice service as a standalone option.”<sup>17</sup>

5. *State of the Lifeline Marketplace Report.* The 2016 Lifeline Order directed the Bureau to review the Lifeline market and submit a report to the Commission on the state of the Lifeline marketplace by June 30, 2021 for the purpose of recommending to the Commission whether to complete the transition to chiefly supporting broadband services by continuing the scheduled phase-down in Lifeline support for voice service while increasing the mobile broadband usage minimum service standards.<sup>18</sup> The 2016 Order directed us to particularly consider, among other things, “the affordability of both voice and broadband services, the pace since adoption of this Order at which voice and data usage has changed, and the associated net benefits of continuing to support voice service as a standalone option.”<sup>19</sup> The 2016 Order noted that this review could result in the Commission amending its rules, including “adjusting support levels or minimum service standards so that the Lifeline program continues to achieve its objectives.”<sup>20</sup> As such, an understanding of Lifeline providers’ current wholesale costs for voice and mobile broadband data and subscriber usage of voice and mobile broadband data is paramount to providing the Commission an accurate picture of the status of the Lifeline program and recommending action, if necessary.

6. *Voice and Mobile Broadband Minimum Service Standard Updates.* Since the adoption of the 2016 Order, the Commission has twice partially waived the implementation of the mobile broadband usage minimum service standard updating mechanism. In 2019, the Commission concluded that the updating formula established by the 2016 Order would result in an “unexpectedly large increase” to the mobile broadband usage minimum service standard, and therefore partially waived that increase but allowed the standard to increase to 3 GB per month.<sup>21</sup> Similarly, the Bureau partially granted a request to waive the 2020 update to the mobile broadband usage minimum service standard, and permitted the standard to increase to 4.5 GB per month.<sup>22</sup> Both waivers were necessary to avoid increases in the standard that would have quadrupled or nearly quadrupled the then-current standard.

7. After the adoption of the 2016 Order and as the mobile broadband usage minimum service standards have increased annually, various parties have petitioned the Commission to alter the formula used to update that standard or to eliminate increases altogether.<sup>23</sup> While those requests have consistently argued that the increased mobile broadband usage minimum service standard resulting from the existing rules will render Lifeline service unaffordable due to increases in providers’ costs, requesting parties have consistently failed to include any cost data that would support their claims. For example, in 2019, providers argued that an increase in the usage allowance from 2 GB per month to 3 GB per month was “too costly to provide to consumers in states where substantial additional subsidies cannot be combined with the standard Lifeline subsidy of \$9.25 per month without raising prices and forcing a co-

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<sup>17</sup> *Id.* at 3987, para. 66.

<sup>18</sup> 2016 Lifeline Order, 31 FCC Rcd at 3987, para. 66.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Lifeline and Link Up Reform and Modernization et. al.*, Order, 34 FCC Rcd 11020, para. 2 (2019) (2019 Waiver Order).

<sup>22</sup> See *Lifeline and Link Up Reform and Modernization et. al.*, Order, WC Docket No. 11-42, et. al., DA 20-1358, at para. 2 (Nov. 16, 2020) (2020 Waiver Order).

<sup>23</sup> See *supra* n.4; see also *In re National Lifeline Association and Assist Wireless, LLC*, Petition for Writ of Mandamus, Case No. 20-1460 (D.C. Cir. Nov. 19, 2020) (seeking writ of mandamus compelling the FCC to grant or deny the petitions for reconsideration of the 2016 Order).

pay in these states.”<sup>24</sup> In partially granting a waiver of the 2019 increase of the mobile broadband usage minimum service standard, the Commission noted that “the record contain[ed] no clear evidence on the extent of additional costs, which makes it difficult to precisely quantify the likely effect of an increase in the minimum usage allowance.”<sup>25</sup> The Commission found retail price data, sometimes advanced by requesting parties to justify their arguments, was an inadequate substitute for true cost data. In fact, the Commission pointed out that retail price data provided by the requesting parties, if accurate, indicated that free-to-the-end-user offerings of wireless resellers would already require a co-pay, even when the standard was set at 2 GB per month, but that no requesting party reported employing a co-pay requirement.<sup>26</sup>

8. In 2020, providers again petitioned the Commission for a waiver of the mobile broadband usage minimum service standard increase but failed to produce cost data to show that an increase in the standard would result in unaffordable Lifeline services. Due to providers’ failure to provide cost data, we declined to fill the gap and instead continued the moderate stair-step approach consistent with the Commission’s precedent.<sup>27</sup>

9. *2017 Notice of Proposed Rulemaking.* In 2017, the Commission sought comment on whether “Lifeline resellers passed through all Lifeline funding to their underlying carriers to ensure federal funding is appropriately spent on the required ‘facilities and services’ rather than non-eligible expenses like free phones and equipment.”<sup>28</sup> Such overhead cost data will assist in the Commission’s directive to assess the Lifeline marketplace by providing insight on other expenses incurred tangentially to providing voice and mobile broadband, which is necessary to provide a complete picture of the impact of the Lifeline minimum service standards and support amounts on the affordability of Lifeline services and how best to allocate support between voice and mobile broadband services.

10. The *2017 Notice of Proposed Rulemaking* sought comment on “how the Commission could leverage the Lifeline program to encourage broadband deployment in areas that have found themselves on the wrong side of the digital divide.”<sup>29</sup> Specifically, the Commission sought comment on incentives for deployment of high-speed broadband services in different geographical areas—such as rural areas and rural areas on Tribal lands—where low-income consumers “may have difficulty obtaining affordable, quality broadband service because service providers have less incentive to incur the costs to deploy advanced facilities or to provide a wide range of services at competitive prices in these areas.”<sup>30</sup>

11. Finally, the *2017 Notice of Proposed Rulemaking* noted that “even without Lifeline support for voice-only service, the monthly cost of such service in urban areas would represent a small percentage of low-income households’ after-tax income,” but “[i]n contrast, it is unclear whether low-income consumers would be able to obtain quality, affordable voice service in rural areas without Lifeline voice support.”<sup>31</sup> Accordingly, the Commission sought comment on eliminating the phase down of voice

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<sup>24</sup> Letter from John J. Heitmann & Joshua Guyan, Counsel for the National Lifeline Association and Q Link Wireless LLC, WC Docket No. 17-287 et al., at 3 (filed Nov. 1, 2019).

<sup>25</sup> *2019 Waiver Order*, 34 FCC Rcd at 11023, para. 10.

<sup>26</sup> *Id.* at para. 10, n.24.

<sup>27</sup> *See 2020 Waiver Order* at para. 2.

<sup>28</sup> *Bridging the Digital Divide for Low-Income Consumers et al.*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 32 FCC Rcd 10475, 10500, para. 72 (2017) (*2017 Lifeline NPRM*).

<sup>29</sup> *Id.*, 32 FCC Rcd at 10502, paras. 75-76.

<sup>30</sup> *Id.*, 32 FCC Rcd at 10502, para. 76.

<sup>31</sup> *Id.*, 32 FCC Rcd at 10502, paras. 75-76.



support in areas—such as rural areas and rural areas on Tribal lands—where “voice rates are actually above the urban average.”

### III. DISCUSSION

12. We find that there is a compelling need for cost and usage data with regard to voice and mobile broadband usage minimum service standard given the unreliable data produced by providers with respect to providing Lifeline services. Collecting cost and usage data for inclusion in the State of the Lifeline Marketplace Report will allow the Bureau to assess and make recommendations to the Commission about, among other policy changes, the mobile broadband usage minimum service standard as advocated for by several parties, the phase-out of Lifeline voice support and transition to chiefly supporting broadband services, and Lifeline support amounts.

13. We narrowly tailor our data collection to include only those data necessary to assist the Commission in fulfilling these objectives. Specifically, we seek network cost data, including wholesale costs, subscribership usage data, and overhead cost data from the nine largest Lifeline mobile service providers, measured by subscribership (“providers”). We find that cost data from this selection of Lifeline providers capture sufficient insight into the program as they provide service to a significant number of Lifeline consumers. We find that the scope of this collection adequately represents the Lifeline marketplace and should provide us with the data necessary to complete the State of the Lifeline Marketplace Report.

14. The data sought in this one-time collection order will enable us to provide the Commission with the analysis and recommendations required in the State of the Lifeline Marketplace Report, and inform future action, such as resolution of reconsideration petitions regarding the mobile broadband usage minimum service standards and voice support phase-down. The Bureau is undertaking this one-time collection in order to balance the need it has for a more complete understanding of the costs of providing Lifeline service with the effort providers will need to devote to providing the information. This collection will help ensure that our recommendations to the Commission are based on a record that includes current information about consumer usage and providers’ costs to be able to fulfill the Commission’s statutory directive to promote the availability and affordability of communications services.

15. Some providers have previously raised the confidentiality of their cost data as a barrier to their voluntary submission of such data to the Commission.<sup>32</sup> This effort will address those concerns by treating the responses to the questionnaire as having being filed in confidence, that is, being filed with a request that the responses not be made routinely available for public inspection under the Commission’s rules.<sup>33</sup>

16. *Network Costs.* We find it necessary to collect network cost data to inform the Commission’s actions on the pending issues regarding the mobile broadband usage minimum service standards and the State of the Lifeline Marketplace Report, including recommendations regarding the Lifeline support amount. Such data will help us better understand the effect of the mobile broadband usage minimum service standard increases on the costs that providers incur to deliver Lifeline-supported service. This, in turn, will allow the Commission to evaluate whether the minimum service standard rules and program reimbursement amounts support an evolving level of service for low-income Americans at an affordable rate.

17. Setting the minimum service standard for mobile broadband usage requires a balance between accessibility and affordability that can only be accomplished with both parts of the picture. The

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<sup>32</sup> See, e.g., Letter from John J. Heitmann & Joshua Guyan, Counsel for the National Lifeline Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 17-287 et al., at 2-3 (filed Sept. 21, 2020).

<sup>33</sup> 47 CFR § 0.459.



minimum service standards were established, in part, to “remove the incentive for providers to offer minimal, un-innovative services.”<sup>34</sup> As a broadband connection becomes more and more vital to adequately participate in today’s society,<sup>35</sup> the mobile broadband minimum service standards have gradually increased year-to-year to ensure that Lifeline consumers can subscribe to the services which have “been subscribed to by a substantial majority of residential customers,”<sup>36</sup> and that they are not left with “second class” service.<sup>37</sup>

18. In 2016, the Commission took into consideration concerns that minimum service standards could force providers to abandon the Lifeline market or require a significant charge for consumers.<sup>38</sup> The network cost information we will collect will assist in evaluating at what point the minimum service standard rules could create such a disruption. To date, such data has been missing. Providers have only submitted conclusory statements that the mobile broadband usage minimum service standard will result in unaffordable service for Lifeline consumers and retail cost data that the Commission has already concluded does not support the relief requested. The data provided by the parties do not shed light on the costs to provide a Lifeline offering compared to a retail, non-Lifeline offering with similar service characteristics—indeed, if costs were prohibitively high, then Lifeline providers would have begun charging a co-payment from most Lifeline subscribers long ago, and yet they have not.<sup>39</sup>

19. The historical inaccuracy of certain providers’ predictions of the impact of the Lifeline minimum service standards on the pricing and availability of Lifeline service offerings also counsels in favor of requiring providers to produce cost data. For example, in this year’s mobile broadband usage minimum service standard waiver proceeding, the petitioner argued that wireless eligible telecommunication carriers (ETCs) have stated on the record that the cost of providing 4.5 GB per month will vastly exceed the \$9.25 monthly Lifeline subsidy for broadband service, and that carriers would consider relinquishing their ETC designation if the increase to 4.5 GB went into effect.<sup>40</sup> These conclusory statements were undermined by evidence that providers continued to pursue Lifeline designations, even in states without state Lifeline subsidies, by some of the very same wireless ETCs arguing that they were not interested in serving those states.<sup>41</sup> Similar arguments were made in 2019, where providers contended that a minimum standard increase from 2 GB to 3 GB was “too costly” and that a lower-than-3-GB “option” was necessary to make enrollment of new Lifeline subscribers outside of states with additional subsidies possible without a co-pay, and that the record “contains no evidence that 3 GB mobile broadband plans will be offered by ETCs outside of California or Tribal areas to existing and new Lifeline subscribers without imposing a price increase over current mobile broadband [minimum

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<sup>34</sup> *2016 Lifeline Order*, 31 FCC Rcd at 4000, para. 104.

<sup>35</sup> *Id.* at 3988, para. 69.

<sup>36</sup> *Id.* at para. 70 (quoting 47 U.S.C. § 254(c)(1)(B)).

<sup>37</sup> *Id.* at 4000, para. 104.

<sup>38</sup> *Id.* at 3995, 4000, paras. 92, 104.

<sup>39</sup> *See 2019 Waiver Order* at para. 10, n.24.

<sup>40</sup> *See National Lifeline Association Petition for Waiver of Lifeline Mobile Broadband Minimum Service standard and Voice Support Phase-Down*, WC Docket No. 11-42 et. al., at 14 (filed Aug. 27, 2020).

<sup>41</sup> *See 2020 Waiver Order* at para. 16.

service standard]-compliant plans, which makes the supported service less affordable for Lifeline-eligible low-income.”<sup>42</sup> These claims, however, never proved true.<sup>43</sup>

20. Indeed, some of the very providers that complain about the costs of an increase in the minimum service standard have in the past failed to disclose any specific details or cost information that would allow us to review and validate such claims (despite them being in the best position to provide that information to the Commission). Without such data, we cannot determine whether such providers are overstating the impact on costs of such an increase. We believe that seeking such data directly will more precisely inform our decisions. Network cost data will also assist the Commission in evaluating the issues that will be considered in the State of the Lifeline Marketplace Report, including whether the Commission should continue the transition to chiefly supporting broadband services.

21. Accordingly, we require the providers subject to this data collection to provide network cost data for voice minutes and mobile broadband data as described in the data collection instrument.<sup>44</sup> We require these data for each of the last five years to assist in showing how costs have evolved during the time after the adoption of the *2016 Order* and establishment of the minimum service standards. Further, we require providers to indicate the proportion of minutes or data purchased that go unused by consumers and whether minutes or data that go unused decrease the average cost per minute or megabyte.

22. *Subscribership and Usage.* We also require information demonstrating data usage by providers’ subscribers, including both Lifeline subscribers and non-Lifeline subscribers. This information—combined with the network cost information and the overhead cost information sought today—will allow the Commission to estimate the costs Lifeline providers incur to provide the Lifeline-supported service (for example, by multiplying a provider’s cost per GB used by the number of GB used to arrive at total costs). Subscriber usage data will also allow the Commission to understand the average number of Lifeline subscribers who exceed their monthly data allowance, and if those subscribers tend to exceed their plans’ data allowance. These data will provide a useful comparison for the State of the Lifeline Marketplace Report and assist our ability to make recommendations for any program changes, particularly with respect to the transition from chiefly supporting voice services to broadband services. Accordingly, we require that providers subject to this data collection produce information demonstrating voice and data usage for both Lifeline and non-Lifeline subscribers for the last five years.

23. *Overhead Costs.* We will also collect data on costs that Lifeline providers incur that are not included in the network-specific costs necessary to provide Lifeline-supported service. Collecting these data will inform the Commission’s decision-making with regard to the Lifeline minimum service standards and the State of the Lifeline Marketplace Report, as described above, and will also inform the Commission’s consideration of the pending 2017 Notice of Proposed Rulemaking, which sought comment on whether “Lifeline resellers passed through all Lifeline funding to their underlying carriers to ensure federal funding is appropriately spent on the required ‘facilities and services’ rather than non-eligible expenses like free phones and equipment.”<sup>45</sup> Indeed, section 254(e) of the Communications Act of 1934, as amended, provides that universal service funding be spent “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”<sup>46</sup>

24. To provide a complete picture of the costs associated with providing Lifeline services, and to ensure that funds are appropriately spent on the services for which the support is intended, we

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<sup>42</sup> See Letter from John J. Heitmann & Joshua Guyan, Counsel for the National Lifeline Association and Q Link Wireless LLC, WC Docket No. 17-287 et al., at 3 (filed Nov. 1, 2019).

<sup>43</sup> See *2020 Waiver Order* at para. 18.

<sup>44</sup> See Appendix A.

<sup>45</sup> *2017 Lifeline NPRM*, 32 FCC Rcd. at 10500, para. 72.

<sup>46</sup> 47 U.S.C. § 254(e).

require other cost data associated with the provision of Lifeline services, including sales, marketing, general, and administrative costs incurred over the previous five years. This more complete picture of Lifeline providers' costs will allow the Commission to take into consideration the legitimate non-network costs incurred by providers when reviewing issues such as the Lifeline minimum service standards and support levels. Indeed, multiple providers have argued that they incur substantial overhead costs in addition to network costs, such as marketing and outreach, customer acquisition, customer service, and regulatory compliance.<sup>47</sup>

25. *Costs in Rural and Tribal Areas.* Finally, we seek network cost data to assist the Commission in determining the state of affordable broadband deployment in different geographical regions.<sup>48</sup> In 2017, the Commission recognized the possibility that low-income consumers may face difficulties obtaining affordable, quality broadband service in rural areas or rural areas on Tribal lands "because service providers have less incentive to incur the costs to deploy advanced facilities or to provide a wide range of services at competitive prices in these areas."<sup>49</sup> In addition to whether these areas faced increased difficulties in obtaining affordable, quality broadband service, the Commission was mindful about the need to establish the correct support amounts to appropriately encourage development of broadband in different geographical areas.<sup>50</sup>

26. Thus, we require the providers subject to today's data collection to indicate whether their costs vary by geographical region—for example, urban versus rural and Tribal versus non-Tribal. Further, if such variations do exist, we require providers to indicate the additional costs associated between different geographical regions and indicate the additional hurdles that provide for such variations. We find this data necessary to assist in answering outstanding questions regarding whether the digital divide is more prevalent in certain geographical regions, and whether the support amount for certain geographical regions needs to be adjusted to help expedite reduction in the digital divide.<sup>51</sup>

27. We also seek data to help determine whether Lifeline for voice services remains necessary in rural and Tribal areas. We require the providers subject to today's data collection to indicate what, if any, voice services they offer in rural and Tribal areas to non-Lifeline subscribers and whether the network costs for voice service differ between urban, rural, Tribal, and non-Tribal areas. Specifically, we require each provider to identify any such costs that are substantially higher in rural and/or Tribal areas than non-rural, non-Tribal areas.

#### IV. PROCEDURAL MATTERS

28. *Instructions.* A copy of this Order will be sent via email and registered mail to each provider obligated to respond.<sup>52</sup> We direct the above-listed providers to email

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<sup>47</sup> See, e.g., Letter from Eric Schimpf, Chief Operating Officer, Global Connection Inc. of America, Jose Cortes, Chief Strategy Officer, Easy Telephone Services Company, Jim Carpenter, President, Telrite Corporation, Dennis Henderson, CEO, Boomerang Wireless, LLC, Nathan Johnson, Co-CEO, TruConnect Communications, Inc., Stephen Klein, President, Amerimex Communications Corp., David Dorwart, CEO, Assist Wireless, LLC, and Jeff Ansted, President, American Broadband and Telecommunications Company, to Marlene Dortch, Secretary, FCC, WC Docket No. 11-42 et. al., at 1 (filed Sept. 14, 2020); Letter from Mark Rubin, Senior Executive for the Government Affairs, TracFone Wireless, Inc., to Marlene Dortch, Secretary, FCC, WC Docket No. 11-42 et. al., at 2 (filed Sept. 29, 2020); Letter from John J. Heitmann & Joshua Guyan, Counsel for Q Link Wireless LLP, to Marlene Dortch, Secretary, FCC, WC. Docket No. 11-42 et al., at 2 (filed Oct. 5, 2020).

<sup>48</sup> See 2017 Lifeline NPRM, 32 FCC Rcd at 10517, para. 125.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.* at 10518, para. 126.

<sup>51</sup> See *id.* at 10517, para. 125.

<sup>52</sup> The Bureau may revise the questionnaire and instructions as needed before sending to the respondents to the extent that such revisions ensure accurate and complete data.

[LifelineCollection@fcc.gov](mailto:LifelineCollection@fcc.gov) to identify two individual contacts for this questionnaire, along with the contacts' respective business email addresses and phone number(s), within 14 days of the release of this Order. A final version of the questionnaire will be sent to the respondent providers and respondents must send the requested data within 60 days of receipt of that final questionnaire. All questions and statements must be completed. If the proper answer is "none," "not applicable," or "zero (0)," insert that answer. Providers shall report all data in whole numbers, shall report dollar amounts without using dollar signs, and shall report all amounts using a comma to separate thousands (for example, report one million dollars as 1,000,000). Willful false statements in responses to this information collection are punishable by fine and/or imprisonment (U.S. Code, Title 18, Section 1001).

29. *Ex Parte Rules.* This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.<sup>53</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, then the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with 47 CFR § 1.1206(b). In proceedings governed by 47 CFR § 1.49(f), or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

## V. ORDERING CLAUSES

30. Accordingly, IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91 and 0.291, that Deutsche Telekom AG, América Móvil, Quadrant Holdings Group LLC, TSC Acquisition Corporation, Telrite Corporation, Amerimex Communications Corporation, i-wireless, LLC, Global Connection Inc. of America., and Assist Wireless, LLC provide the data required herein within 60 days of receipt of the final questionnaire.

31. IT IS FURTHER ORDERED, that pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), that this Order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Wireline Competition Bureau

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<sup>53</sup> 47 CFR. §§ 1.1200 *et seq.*

<b>Certification</b>
I certify that I am <i>[Enter Office Title]</i> of <i>[Enter Exact Legal Name of Respondent]</i> and that I have examined the responses to the Lifeline Data Collection Questionnaire, and that to the best of my knowledge and belief, all responses to the Questionnaire are true, correct, and complete.
<b>Signature:</b> <i>[Enter Digital Signature]</i>
<b>Full Name:</b> <i>[Enter Full Name]</i>
<b>Date:</b> <i>[Enter Date in MM/DD/YY Format]</i>
<b>Telephone Number:</b> <i>[Enter Telephone Number]</i>
<b>E-mail Address:</b> <i>[Enter E-mail Address]</i>
<b>Willful false statements in responses to this information collection are punishable by fine and/or imprisonment (U.S. Code, Title 18, Section 1001).</b>

For each calendar year, report the number of customers in each usage category listed below:

Table 1.1	2016	2017	2018	2019	2020
Total customers who average Less than 1 GB usage per month					
Total customers who average more than or equal to 1 GB & less than 2 GB usage per month					
Total customers who average more than or equal to 2 GB & less than 3 GB usage per month					
Total customers who average more than or equal to 3 GB & less than 4 GB usage per month					
Total customers who average more than or equal to 4 GB & less than 5 GB usage per month					
Total customers who average more than or equal to 5 GB & less than 6 GB usage per month					
Total customers who average more than or equal to 6 GB & less than 8 GB usage per month					
Total customers who average more than or equal to 8 GB & less than 10 GB usage per month					
Total customers who average more than or equal to 10 GB & less than 15 GB usage per month					
Total customers who average more than or equal to 15 GB & less than 20 GB usage per month					
Total customers who average more than or equal to 20 GB usage per month					
Total customers who average less than 250 minutes usage per month					
Total customers who average more than or equal to 250 minutes & less than 500 minutes usage per month					
Total customers who average more than or equal to 500 minutes & less than 750 minutes usage per month					
Total customers who average more than or equal to 750 minutes & less than 1,000 minutes usage per month					
Total customers who average more than or equal to 1,000 minutes & less than 1,250 minutes usage per month					
Total customers who average more than or equal to 1,250 minutes & less than 1,500 minutes usage per month					
Total customers who average more than or equal to 1,500 minutes & less than 2,000 minutes usage per month					
Total customers who average more than or equal to 2,000 minutes usage per month					

For each calendar year, report the number of Lifeline customers in each usage category listed below:

Table 1.2	2016	2017	2018	2019	2020
Total Lifeline customers who average Less than 1 GB usage per month					
Total Lifeline customers who average more than or equal to 1 GB & less than 2 GB usage per month					
Total Lifeline customers who average more than or equal to 2 GB & less than 3 GB usage per month					
Total Lifeline customers who average more than or equal to 3 GB & less than 4 GB usage per month					
Total Lifeline customers who average more than or equal to 4 GB & less than 5 GB usage per month					
Total Lifeline customers who average more than or equal to 5 GB & less than 6 GB usage per month					
Total Lifeline customers who average more than or equal to 6 GB & less than 8 GB usage per month					
Total Lifeline customers who average more than or equal to 8 GB & less than 10 GB usage per month					
Total Lifeline customers who average more than or equal to 10 GB & less than 15 GB usage per month					
Total Lifeline customers who average more than or equal to 15 GB & less than 20 GB usage per month					
Total Lifeline customers who average more than or equal to 20 GB usage per month					
Total Lifeline customers who average less than 250 minutes usage per month					
Total Lifeline customers who average more than or equal to 250 minutes & less than 500 minutes usage per month					
Total Lifeline customers who average more than or equal to 500 minutes & less than 750 minutes usage per month					
Total Lifeline customers who average more than or equal to 750 minutes & less than 1,000 minutes usage per month					
Total Lifeline customers who average more than or equal to 1,000 minutes & less than 1,250 minutes usage per month					
Total Lifeline customers who average more than or equal to 1,250 minutes & less than 1,500 minutes usage per month					
Total Lifeline customers who average more than or equal to 1,500 minutes & less than 2,000 minutes usage per month					
Total Lifeline customers who average more than or equal to 2,000 minutes usage per month					

For each calendar year, report the following:

Table 1.3	2016	2017	2018	2019	2020
Average number of customers per month with a monthly data usage allowance					
Average number of customers per month who exceeded their monthly data usage allowance					
For customers who exceeded their data allowance, what was the average per month, per subscriber they exceeded it by?					
Average number of Lifeline customers per month with a monthly data usage allowance					
Average number of Lifeline customers per month who exceeded their monthly data usage allowance					
For Lifeline customers who exceeded their data allowance, what was the average per month, per subscriber they exceeded it by?					
Average number of customers per month without a monthly data usage allowance					
Average number of Lifeline customers per month without a monthly data usage allowance					



**Network Costs:**

For each calendar year, report the costs paid to network operators for network access for your customers:

Table 2.1	2016	2017	2018	2019	2020
Total GB purchased					
Total amount paid for wholesale GB					
Total wholesale minutes purchased					
Total amount paid for wholesale minutes					
Total GB purchased for Lifeline customers					
Total amount paid for wholesale GB for Lifeline customers					
Total wholesale minutes purchased for Lifeline customers					
Total amount paid for wholesale minutes for Lifeline customers					

Answer yes or no for the following questions:

Table 2.2		
2.2a	Do wholesale rates for minutes and/or GB vary if you purchase higher quantities? (if yes, fill out Table 2.3)	
2.2b	Do wholesale rates for minutes and/or GB vary if they are purchased specifically for Lifeline subscribers? (If yes, fill out Table 2.4)	
2.2c	Do wholesale rates for minutes and/or GB vary by geographic area? (If yes, fill out Table 2.5)	
2.2d	Did you incur any network costs other than the wholesale cost of minutes and/or data and excluding overhead costs (e.g., fixed payments made to the network operator, or network costs incurred by the MVNO)? (If yes, fill out Table 2.6)	
2.2e	Do any of the above additional network costs depend on Lifeline usage/or subscribership? (If yes, fill out Table 2.7)	
2.2f	Do any of these additional network costs vary by geography? (If yes, fill out Table 2.8)	
2.2g	Do you incur network costs for GB that were available to a customer in their data allowance but were never used? (If yes, fill out Table 2.9)	
2.2h	If you answered yes to 2.2g, are those specific costs included in Table 2.1, rows 8 through 11?	

If 2.2a is yes fill out Table 2.3:

Please describe in detail any volume discount you received for purchasing a larger quantity of wholesale GB or minutes:

Table 2.3					
Unique Identifier (i.e. price or discount code) [Optional]	Quantity threshold for price variation (i.e. surcharge or discount)	Applicable to minutes or GB	Price Variation (i.e. surcharge or discount amount)	Applicable years	Additional Information

If 2.2b is yes fill out Table 2.4:

Table 2.4
Describe in detail any discount you received (or price variation you incurred) for purchasing a wholesale GB or minutes specifically for Lifeline subscribers:

If 2.2c is yes fill out Table 2.5:

Please describe in detail any discount you received (or price variation you incurred) for purchasing a wholesale GB or minutes in each relevant geographic area

Table 2.5					
Unique Identifier (i.e. price or discount code) [Optional]	Geographic Area (e.g., the regions, states, MSAs, counties, ZIP codes)	Applicable to minutes or GB	Price Variation (i.e. surcharge or discount amount)	Applicable years	Additional Information

If 2.2d is yes fill out Table 2.6:

Please describe in detail your additional network costs (excluding wholesale Min/GB and overhead costs)

Table 2.6

Year	Cost Type	Cost Amount	Additional Information

If 2.2e is yes fill out Table 2.7:

<b>Table 2.7</b>
Explain how and why your additional network costs depend on Lifeline usage/or subscribership:

If 2.2f is yes fill out Table 2.8:

Please explain how and why your additional network costs vary by geography:

Table 2.8			
Geographic Area	Cost Type	Cost	Any additional information or explanation (i.e. years these costs were or were not applicable in each geographic region):

SAMPLE



If 2.2g is yes fill out Table 2.9:

Table 2.9	2016	2017	2018	2019	2020
Total GB purchased for Lifeline customers that were not used by a Lifeline end-user					
Total amount paid for wholesale GB for Lifeline customers that were not used by a Lifeline end-user					
Total wholesale minutes purchased for Lifeline customers that were not used by a Lifeline end-user					
Total amount paid for wholesale minutes for Lifeline customers that were not used by a Lifeline end-user					

**Network Costs and Wholesale Prices:**

For each calendar year, report the following:

Table 3.1	2016	2017	2018	2019	2020
Total GB sold					
Total amount received for wholesale GB					
Total wholesale minutes sold					
Total amount received for wholesale minutes					
Total GB sold for Lifeline customers use					
Total amount received for wholesale GB for Lifeline customers use					
Total wholesale minutes sold for Lifeline customers use					
Total amount received for wholesale minutes for Lifeline customers use					

Answer yes or no for the following questions:

Table 3.2		
3.2a	Do your wholesale prices for minutes and/or GB vary for higher quantity amounts purchased? (If yes, fill out Table 3.3)	
3.2b	Do your wholesale prices for minutes and/or GB differ by geographic regions or areas? (If yes, fill out Table 3.4)	
3.2c	Do you have any additional variation in pricing, including, for example, limits on Lifeline customer usage? (If yes, fill out Table 3.5)	

If 3.2a is yes fill out Table 3.3:

Please describe in detail any volume discounts you offer for larger quantity of wholesale GB or minutes sold:

Table 3.3					
Unique Identifier (i.e. price or discount code) [Optional]	Quantity threshold for price variation (i.e. surcharge or discount)	Applicable to minutes or GB	Price Variation (i.e. surcharge or discount amount)	Applicable years	Additional Information

If 3.2b is yes fill out Table 3.4:

Please describe in detail any regional or geographic specific discounts you offer:

Table 3.4					
Unique Identifier (i.e. price or discount code) [Optional]	Geographic Area (e.g., the regions, states, MSAs, counties, ZIP codes)	Applicable to minutes or GB	Price Variation (i.e. surcharge or discount amount)	Applicable years	Additional Information

If 3.2c is yes fill out Table 3.5:

Table 3.5
Describe in detail your additional variation in pricing, specifically for Lifeline subscribers:

For each calendar year, report your average network costs per month per user:

Table 3.6	2016	2017	2018	2019	2020
Average Network Costs per month per user					
Average Network Costs per month per user in Urban / Non-Tribal areas					
Average Network Costs per month per user in Urban / Tribal areas					
Average Network Costs per month per user in Rural / Non-Tribal areas					
Average Network Costs per month per user in Rural / Tribal areas					

Table 3.7	Explanation
Explanation on why network costs vary year to year	
Explanation for cost differences &/or allocations in Urban / Non-Tribal areas	
Explanation for cost differences &/or allocations in Urban / Tribal areas	
Explanation for cost differences &/or allocations Rural / Non-Tribal areas	
Explanation for cost differences &/or allocations in Rural / Tribal areas	



**For each calendar year, report your total overhead costs and the average customers supported by those overhead costs each month:**

(Costs should include all operating costs other than network costs, and should exclude the cost of capital and interest; depreciation and amortization; capital expenditures; and adjustments to balance sheet values.)

<b>Table 4.1</b>	2016	2017	2018	2019	2020
Total Overhead Costs per Month					
Average number of Users Supported per month					
Additional overhead costs per Lifeline customer per month					
Explanation of Cost Difference of Lifeline customer					

Answer yes/no to the following questions:

Table 4.2		
4.2a	Do the overhead costs reported include marketing costs?	
4.2b	Do the overhead costs reported include sales costs?	
4.2c	Do the overhead costs reported include billing costs?	
4.2d	Do the overhead costs reported include advertising costs?	
4.2e	Do the overhead costs reported include administrative costs?	
4.2f	Do the overhead costs reported include in-person promotional event costs?	
4.2g	Do the overhead costs reported include promotional items (e.g. t-shirts, handsets, headphones)?	
4.2h	Are there any other items included in overhead costs that are not listed above:	

**If 4.2h is yes fill out Table 4.3:**

Table 4.3
Explain in detail the additional overhead costs categories included in your totals.



# Lifeline Provider Data Collection

## Filing Instructions

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## Lifeline Data Collection Overview

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In an Order released on December 23, 2020, the Wireline Competition Bureau (Bureau) established a one-time data collection that seeks discrete cost and usage data from a group of Lifeline service providers necessary to inform the policy choices before the Commission regarding the mobile broadband minimum service standards and voice support phase-down, and to aid the development of the 2021 State of the Lifeline Marketplace Report. Responses to this collection are due 60 days after receipt of the questionnaire and instructions by the respondent service provider.

## Who Must Submit Data

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Pursuant to the Bureau's Order of December 23, 2020, the following nine (9) Lifeline service providers are required to fully and accurately complete the Lifeline Data Collection questionnaire and submit it to the Bureau in compliance the Bureau's Order and with the filing instructions provided below:

1. Deutsche Telekom AG
2. América Móvil
3. Quadrant Holdings Group LLC
4. TSC Acquisition Corporation
5. Telrite Corporation
6. Amerimex Communications Corporation
7. i-wireless, LLC
8. Global Connection Inc. of America
9. Assist Wireless, LLC

Throughout these instructions, the above Lifeline service providers may be referred to as "you" or "respondent." Each provider should respond as a single entity, regardless of the number of separately incorporated operating companies or individual employees.

## What Must be Submitted

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Respondents must fully and completely respond to each question to the extent it is relevant to their voice and broadband service operations in the United States. A valid entry must be submitted on the template spreadsheet for each component of the required information. These instructions set forth the requirements for a valid entry. These instructions instruct you to mark "N/A" or leave an entry blank in certain circumstances. You must explain any other use of "N/A" or "blank." You must also provide an explanation for any other entry that does not provide all or part of the requested information. If you have any questions about completing this form, please contact the Bureau at [LifelineCollection@fcc.gov](mailto:LifelineCollection@fcc.gov) before submitting your responses. If the spreadsheet is not completed properly, the form may be rejected and/or returned to you. Willful false statements in responses to this data collection are punishable by fine and/or imprisonment (U.S. Code, Title 18, Section 1001).

Uploading supporting documents is optional and encouraged. For example, you may find it more efficient to send your price schedules and/or discount schedules that do not easily fit into the table format the Bureau provided. Rather than typing the specifics into one spreadsheet cell, you can submit your own documentation along with the spreadsheet at the time you file your responses. If you opt to provide an attachment in lieu of entering your responses in the corresponding cells in the spreadsheet template, enter a clear description of the attachment that contains the relevant information.

All sums should be summed to an annual level for that calendar year.

All averages should be averages of monthly values or averages as described.

All row numbers refer to the spreadsheet rows, not the row number within the table.

## 1. Subscriber Information:

On the second tab ("Subscriber Info"), complete the following tables:

- **Table 1.1**

This table asks you to report your customer usage (both Lifeline and non-Lifeline) amounts for both data and voice for the specified years

- Report the average number of subscribers for each of the usage categories listed in the table
  - As an example: 'Total customers who average more than or equal to 1 GB & less than 2 GB usage per month' should be the total number of customers you have whose average use per month was between 1.0000 and 1.9999 GB
  - To calculate this average, first count the number of subscribers in each usage tier each month
  - For example, a customer that used 0.5 GB one month and 3.5 GB another month would count among the 'less than 1 GB' tier in the first month and in the 'more than or equal to 3 GB & less than 4 GB usage per month' in the second month
  - Once you have calculated the total customers in each usage tier for each month, you will then sum up the 12 monthly totals for that tier and divide by 12; this will give you the average for that usage tier for that calendar year
- Do the above steps for each of the 11 different usage categories for data and 8 different usage categories for voice

- **Table 1.2**

This table asks you to report your Lifeline customer usage amounts for both data and voice over the past 5 years

- This table is the same as Table 1.1, but the totals should include only your Lifeline customers
- If you cannot segment your Lifeline customers and at least 90% of your subscriber base is Lifeline customers, then you should report the averages across your entire customer base (or the same values as Table 1.1)
  - Values should only be the same as Table 1.1 for years where the average monthly percentage of Lifeline subscribers is 90% or greater
- If you cannot segment your Lifeline customers and Lifeline customers are less than 90% of your customer base, then leave this table blank

- **Table 1.3**

This table asks you to report your customer data allowance (or usage caps) over the past 5 years, for both your entire customer base and your Lifeline customers

- Report the average number of subscribers per month with a monthly data usage allowance
  - Row 4 should be the total across your entire customer base (and for whom a usage allowance exists)
  - Row 7, is the same question as row 4 but should be the total for your Lifeline customers only
  - If you cannot segment your Lifeline customers and at least 90% of your subscriber base is Lifeline customers, then you should report the averages across your entire customer base (or the same values as row 4)
  - Only use the values across your entire customer base for years where the average monthly percentage of Lifeline subscribers is 90% or greater
  - If you cannot segment your Lifeline customers and Lifeline customers are less than 90% of your customer base, then leave this row blank
- Report the average number of subscribers per month who exceeded their monthly data usage allowance
  - Row 5 should be the total across your entire customer base (and for whom a usage allowance exists)
  - Row 8 is the same question as row 6, but should be the total for your Lifeline customers only
  - If you cannot segment your Lifeline customers and at least 90% of your subscriber base is Lifeline customers, then you should report the averages across your entire customer base (or the same values as row 5)



- Values should only be the same as row 5 for years where the average monthly percentage of Lifeline subscribers is 90% or greater
- If you cannot segment your Lifeline customers and Lifeline customers are less than 90% of your customer base, then leave this row blank
- Report the average amount customers exceeded their monthly data usage allowance by (report the per month per user average); this is only for users who had an allowance and exceed it
  - For example: first, for each month determine which subscribers had a usage allowance and exceeded it; second determine how much each subscriber exceeded his or her cap by that month; third sum up all of the excess GB that month and divide it by the total subscribers found in part one. Then take the average of the 12 months for the respective calendar year.
  - Row 6 should be the total across your entire customer base (and for whom a usage allowance exists)
  - Row 9 is the same question as row 6, but should be the total for your Lifeline customers only
  - If you cannot segment your Lifeline customers and at least 90% of your subscriber base is Lifeline customers, then you should report the averages across your entire customer base (or the same values as row 6)
  - Values should only be the same as row 6 for years where the average monthly percentage of Lifeline subscribers is 90% or greater
  - If you cannot segment your Lifeline customers and Lifeline customers are less than 90% of your customer base, then leave this row blank
- Row 10 asks for the average number of subscribers per month who do not have a data usage allowance
  - This total should be across your entire customer base
  - This total includes prepaid subscribers that do not have a set allowance each month
- Row 11 asks for the average number of Lifeline subscribers per month who do not have a data usage allowance
  - Examples of customers who do not have a data usage allowance are: those with pay-as-you-go plans that have no set monthly usage; or those with unlimited plans that have no usage-dependent throttling or reduction in connection speeds, or higher costs
  - This total should be just across your Lifeline subscriber base
  - This total includes prepaid Lifeline subscribers that do not have a set allowance each month

- If you cannot segment your Lifeline customers and at least 90% of your subscriber base is Lifeline customers, then you should report the averages across your entire customer base (or the same values as row 10)
- Values should only be the same as row 10 for years where the average monthly percentage of Lifeline subscribers is 90% or greater
- If you cannot segment your Lifeline customers and Lifeline customers are less than 90% of your customer base, then leave this row blank

## 2. Mobile Virtual Network Operator (MVNO) Providers:

This section applies only to MVNOs or service resellers, and asks for your **network costs**, meaning the costs incurred to provision service, including both direct and indirect, or shared network costs. Network costs include the costs of wholesale services necessary to provide retail services, e.g., purchases of wholesale call minutes, or gigabytes of data or similar, would all be network costs. All overhead costs should be excluded from the values in this section. Examples of costs excluded from this section are advertising and customer outreach, customer billing costs, and other general and administrative costs.

Report costs that are “only for the provision, maintenance, and upgrading of facilities and services for which the [Universal Service] support is intended,” as provided by 47 U.S.C. § 254(e). Exclude any costs that do not meet that requirement.

On the third tab (“MVNO Providers”), complete the following tables:

- **Table 2.1:**

This table asks you to report the costs paid to network operators for network access for your customers for both broadband and voice services

- Row 4 should be the total GB of data you purchased that year
- Row 5 asks for the total amount you paid for the data; this should be the wholesale costs for GBs totaled for that year (rounded to the nearest dollar)
- Row 6 should be the total number of voice minutes you purchased that year
- Row 7 asks for the total amount you paid for voice minutes; this should be the wholesale costs for voice minutes totaled for that year
- Rows 8 through 11 repeat the four above questions, but ask for the totals to be specifically for Lifeline subscribers and those respective costs
  - If you cannot segment your Lifeline customers and at least 90% of your subscriber base is Lifeline customers, then you should report the averages across your entire customer base (or the same values as rows 4-7)
  - The values should only be the same as rows 4-7 for years where the average monthly percentage of Lifeline subscribers is 90% or greater

- If you cannot segment your Lifeline customers and Lifeline customers are less than 90% of your customer base, then leave this table blank

- **Table 2.2:**

This table asks you a series of yes or no questions regarding both your data and voice networks that will then determine which of the other tables on this tab you will be required to answer

- Choose yes or no from the drop down for each of the 8 questions
- Please note if you answer yes to any questions between 2.2a and 2.2h you will need to fill out an additional table on this tab

- **Table 2.3:**

This table asks you specific details regarding price variations for the wholesale minutes and/or GB you purchased between 2016 and 2020; this would include any quantity-based discounts you received

- Only fill out this table if you answered yes to 2.2a
- Report all price variations based on quantity
- The price variation should be calculated as: (final price - the standard price) / the standard price; so for example if you paid \$90 but the standard price was \$100, you would report this is as -.1 or -10%
- Column M is optional, and refers to the name or code you use to refer to this specific price variation
- List every breakpoint that is associated with a different price variation
- Indicate if this information is applicable to GB or minutes
- List the years from 2016 to 2020 for which this price variation was available
- Use the text field in column R to indicate any other specifics for which the price variation depends on or any information you would like to include
- If you do not have price variations based on quantity enter "N/A"

- **Table 2.4:**

This table asks you details regarding any rates you paid or discounts you received between 2016 and 2020 on wholesale minutes and/or GB that were specific to Lifeline users

- Only fill out this table if you answered yes to 2.2b
- Report and explain any rates or discounts specific to Lifeline customers and/or usage
- List both the price variation (or discount amount) and any other pertinent information
- If there are no specific rates or discounts for Lifeline customers enter "N/A"

- **Table 2.5:**

This table asks you specific details regarding price variations or discounts for the wholesale minutes and/or GB you purchased between 2016 and 2020 that are specific to a particular region or geographic unit

- Only fill out this table if you answered yes to 2.2c
- Report price variations based on geographic areas
- The price variation should be calculated as: (final price - the standard price) / the standard price; so for example if you paid \$90 but the standard price was \$100, you would report this as -.1 or -10%
- Column V is optional, and refers to the name or code you use to refer to this specific price variation
- Indicate the geographic area included for each variation in price; this can be a list of included regions, states, MSAs, counties, or ZIP codes
  - Include rural and Tribal area-specific rates, discounts, or prices if applicable
  - If you include a list, separate the entities with a semi colon
- For each geographic area indicate if the price variation is relevant for minutes or GB
- List the years from 2016 to 2020 for which this price variation was available
- Use the text field in column AA to indicate any other specifics for which the price variation depends on or any information you would like to include
- Column AA should be used to describe what areas are encompassed in any general regional terms used (i.e. rural or Tribal)
- If you do not have price variation by geographic regions enter "N/A"

- **Table 2.6:**

This table asks for details on additional data and/or voice network costs you had between 2016 and 2020 (other than wholesale minutes and GB) that are not included in overhead costs; examples of these costs could be: fixed payments made to the network operator, or network costs incurred by the MVNO)

- Only fill out this table if you answered yes to 2.2d
- Explain the cost type or category
- Include the years between 2016 and 2020 that these costs were relevant
- Include the total cost amount for this cost type
- Provide additional information or explanation in column AF for these costs
- If you do not have any additional network costs beyond wholesale minutes and GB then leave this table (and Table 2.7 and 2.8) enter "N/A"

- **Table 2.7:**

This table asks you to explain how the additional network costs indicated in part 2.2d and Table 2.6 are related (if at all) to your Lifeline subscribers

- Only fill out this table if you answered yes to 2.2e
- Detail which costs are related to Lifeline usage or customer base
- Explain why your Lifeline subscribers lead to higher network costs (excluding their wholesale minutes and/or GB and any overhead support they may require, as those are asked in other questions)
- If your additional network costs are not specific to Lifeline subscribers then enter "N/A"

• **Table 2.8:**

This table asks you to explain how the additional network costs indicated in part 2.2d and Table 2.6 are related (if at all) to geographic regions

- Only fill out this table if you answered yes to 2.2f
- Indicate the geographic area included for each discount; this can be a list of included regions, states, MSAs, counties, or ZIP codes
  - Include rural and Tribal area-specific rates, discounts, or prices if applicable
  - If you include a list, separate the entities with a semi colon
- Explain the cost type or category
- Include the total cost amount for this cost type
- Provide additional information or explanation in column AM for these costs (for example the years between 2016 and 2020 that these costs were relevant to these specific geographic areas)
- If your additional network costs do not vary by geographic region then enter "N/A"

• **Table 2.9:**

This table asks you to detail the network costs you indicated in 2.2g; these are the costs you incurred from purchasing GB for data and/or voice minutes that were available to a Lifeline customer in their data or voice allowance but were never used

- Only fill out this table if you answered yes to 2.2g
- Row 4 asks for the total GB purchased for Lifeline subscribers that were not used by a Lifeline end-user
- Row 5 asks for the wholesale costs of the GB outlined in row 4
- Row 6 asks for the total voice minutes purchased for Lifeline subscribers that were not used by a Lifeline end-user
- Row 7 asks for the wholesale costs of the voice minutes outlined in row 6
- If you did not incur any costs for unused GB or voice minutes specifically for Lifeline customers then enter "N/A"

### 3. Facilities-Based Providers:

This section asks for your network rates (prices) at which network access is sold on a wholesale basis to MVNOs. Separately, report the underlying cost of provisioning service. For the cost of provisioning service, we are seeking a cost comparable to the wholesale rates – one that averages over the lifetime all the equipment necessary to deliver service, allocated on a subscriber basis.

On the fourth tab (“Facilities-Based Providers”), complete the following tables:

- **Table 3.1:**

This table asks you to report the costs paid by MVNOs to access your network for both broadband and voice services

- Row 4 should be the total GB you sold that year to MVNOs
- Row 5 asks for the total amount you received for GB; this should be the wholesale revenue for GBs totaled for that year
- Row 6 should be the total number of minutes you sold that year to MVNOs
- Row 7 asks for the total amount you received for minutes; this should be the wholesale revenue for minutes totaled for that year
- Rows 8 through 11 repeat the above four questions, but ask for the totals to be specifically for end-users who are Lifeline subscribers and that respective revenue
  - If you do not have specific rates for Lifeline end-users, then enter “N/A”

- **Table 3.2:**

This table asks you a series of yes or no questions regarding your wholesale prices for data and minutes that will then determine which of the tables on this tab you will be required to answer

- Choose yes or no from the drop down for each of the 3 questions
- Please note if you answer yes to questions 3.2a, 3.2b, or 3.2c you will need to fill out an additional table on this tab

- **Table 3.3:**

This table asks you specific details of any quantity-based price variations (or discounts) you offered between 2016 and 2020 on your wholesale minutes and/or GB sold

- Only fill out this table if you answered yes to 3.2a
- Report all price variations based on quantity
- The price variation should be calculated as:  $(\text{final price} - \text{the standard price}) / \text{the standard price}$ ; so for example if you paid \$90 but the standard price was \$100, you would report this is as -.1 or –10%

- Column M is optional, and refers to the name or code you use to refer to this specific price variation
- List every breakpoint that is associated with a price variation
- Indicate if this information is applicable to GB or minutes
- List the years from 2016 to 2020 for which the price variation was available
- Use the text field in column R to indicate any other specifics for which the price variation depends on or any additional explanation
- If you do not have price variations based on quantity then enter “N/A”

● **Table 3.4:**

This table asks you specific details of any geographic-based price variations (or discounts) you offered between 2016 and 2020 on your wholesale minutes and/or GB sold

- Only fill out this table if you answered yes to 3.2b
- Report all price variations based on geographic areas
- The price variation should be calculated as: (final price - the standard price) / the standard price; so for example if you paid \$90 but the standard price was \$100, you would report this is as -.1 or -10%
- Column T is optional, and refers to the name or code you use to refer to this specific price variation
- Indicate the geographic area included for each price variation offered; this can be a list of included regions, states, MSAs, counties, or ZIP codes
  - Include rural and Tribal area-specific rates, discounts, or prices if applicable
  - If you include a list, separate the entities with a semi colon
- For each geographic area indicate if the price variation is for minutes or GB
- List the years from 2016 to 2020 for which the price variation was available
- Use the text field in column Y to indicate any other specifics for which the price variation depends on or any additional explanation
- If you do not offer discounts for any geographic region then enter “N/A”

● **Table 3.5:**

This table asks you specific details of any price variations (or discounts) you offered between 2016 and 2020 on wholesale minutes and/or GB specifically for Lifeline users

- Only fill out this table if you answered yes to 3.2c
- Report and explain any variations in rates or discounts specific to Lifeline customers or Lifeline usage
- Include both the price variation and any other pertinent details
- If there is no specific price variation for Lifeline customers, then enter “N/A”

- **Table 3.6:**

This table asks you your total network costs per month per user between 2016 and 2020

- Row 5 asks for your average network costs per month per user between 2016 and 2020 for urban / non-Tribal areas
- Row 6 asks for your average network costs per month per user between 2016 and 2020 for urban / Tribal areas
- Row 7 asks for your average network costs per month per user between 2016 and 2020 for rural / Tribal areas
- Row 8 asks for your average network costs per month per user between 2016 and 2020 for rural / non-Tribal areas
- If your network costs do not vary by geographic categories then enter “N/A”
- **Please note this table is not contingent on a yes/no question, and is required**

- **Table 3.7:**

This table asks you to explain how your network costs and/or your network cost allocations vary by geographic area type

- Use the text field in row 4 to indicate any other specifics, caveats, or information regarding the average network costs per month per user for that year
- Use the text fields in row 5 through 8 to explain if or how network cost allocations differ by rural / non-rural and tribal / non-tribal areas
- If your network costs do not vary by rurality or for tribal areas, then enter “N/A”
- **Please note this table is not contingent on a yes/no question, and is required**

#### 4. Overhead Costs

Report overhead costs below, including sales, marketing, general and administrative, and any other cost not captured by the network costs detailed on previous tabs. However, exclude costs that do not meet the requirements of 47 U.S.C. § 254 (e). Report costs that are “only for the provision, maintenance, and upgrading of facilities and services for which the [Universal Service] support is intended.”

On the fifth tab (“Overhead Costs”), complete the following tables:

- **Table 4.1:**

This table asks for your total overhead costs and total users supported by those overhead costs over the past 5 years.

- This should include all operating costs other than network costs and should exclude the cost of capital and interest; depreciation and amortization; capital expenditures; and adjustments to balance sheet values



- Wholesale costs for minutes and GB should be excluded from this section, as they are reported in other tables
  - Report in row 5 your total overhead costs averaged per month for that year
  - Report in row 6 the average number of monthly subscribers supported by those overhead costs for each year
  - Report in row 7 the incremental overhead costs required to support Lifeline subscribers
    - If there are no incremental overhead costs, enter \$0
    - If you are unable to break-out overhead costs for Lifeline subscribers, but you know there are additional overhead costs, leave blank and explain in row 8
  - Explain in row 8 detail the reasons for the incremental costs in overhead for Lifeline customers
- **Table 4.2:**
    - Indicate which categories are included in your overhead cost calculations
    - Answer from the yes / no drop down
    - The cost categories listed may not be mutually exclusive in your records or data; however, we are only concerned if they are included or excluded from your totals
  - **Table 4.3:**
    - If you answered yes to 4.2h, you must fill out this table
    - Please detail the other categories of overhead costs that are not already indicated in Table 4.2
    - If you answered no to 4.2h, please leave this table blank

## Confidentiality

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As stated in the Order, the responses to the questionnaire will be treated as being filed in confidence, that is, being filed with a request that the responses not be made routinely available for public inspection pursuant to 47 CFR § 0.459.

## Certification & Submission

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Submissions should be accompanied by a certification by an officer of the provider that based on information and belief formed after reasonable inquiry the statements and information contained in the submission are true, accurate, and complete.

Please indicate the name of the certifying official and the certification date on the first tab.  
Email the completed excel file and any supporting information to: [LifelineCollection@fcc.gov](mailto:LifelineCollection@fcc.gov)